IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

TUESDAY, THE 25TH SEPTEMBER 2007 / 3RD ASWINA 1929

WP(C).No. 12540 of 2007(P)

PETITIONER:

E.PEETHAMBARAN, ASSISTANT ENGINEER (RETIRED), EDAVALATH HOUSE, P.O.KUTTIKKATTOOR, KOZHIKODE - 8.

BY ADV. SRI.S.RAMESH BABU

RESPONDENTS:
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1. **THE KERALA STATE ELECTRICITY BOARD REPRESENTED BY ITS SECRETARY, VYDHUTHI BHAVANAM, PATTOM, THIRUVANANTHAPURAM.**

2. **THE CHIEF ENGINEER (HRM) VYDUTHI BHAVANAM, THIRUVANANTHAPURAM.**

3. **THE DEPUTY CHIEF ENGINEER, TRANSMISSION CIRCLE, NELLALAM.**

4. **THE ACCOUNTS OFFICER (PENSION SANCTION), VYDHUTHI BHAVANAM, THIRUVANANTHAPURAM.**

BY ADV. SRI.K.S.ANIL, SC, KSEB
SRI. ASOK M.CHERIYAN, SC, KSEB

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/09/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KSS

WPC.NO.12540/2007 P

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF ORDER OF THE EXECUTIVE ENGINEER DTD. 27/07/2002.**

EXT.P2: **COPY OF THE ORDER DTD. 25/09/2002.**

EXT.P3: **COPY OF THE LETTER DTD. 27/09/2002.**

EXT.P4: **COPY OF THE ORDER DTD. 31/12/2002.**

EXT.P5: **COPY OF THE CASH RECEIPT NO.1748 DTD. 11/05/2005.**

EXT.P6: **COPY OF THE PENSION SANCTION ORDER DTD. 20/10/2005.**

EXT.P7: **COPY OF THE LETTER DTD. 1/12/2005.**

EXT.P8: **COPY OF THE COMMUNICATION DTD. 5/06/2006.**

EXT.P9: **COPY OF THE LETTER DTD. 30/06/2006.**

EXT.P10: **COPY OF THE LETTER DTD. 3/03/2007.**

EXT.P11: **COPY OF THE GOVERNMENT ORDER G.O.(P) NO.380/05/FIN. DTD. 12/08/2005.**

/TRUE COPY/

P.S.TO JUDGE

KSS

V.GIRI, J.

W.P.(C).No.12540 of 2007 P

Dated this the 25th day of September, 2007.

JUDGMENT

The petitioner retired from the service of the Kerala State Electricity Board on 30.6.2005. While he was working as a Sub Engineer, pursuant to an enquiry conducted against him, Ext.P4 order of punishment was passed on 31.12.2002. The relevant portion of Ext.P4 reads as follows:

> ***"Taking into consideration the antecedents of integrity of character and unflinching loyalty throughout his career the punishment proposed in the show cause notice is hereby mitigated and the undersigned therefore orders for barring two increments without cumulative effect. The period spent on suspension will be treated as eligible leave if he wishes so."***

2. What was therefore imposed was barring of two increments without cumulative effect. The date of increment, as far as the petitioner is concerned, is 1st of August and therefore, in effect, the increments, which the petitioner would have otherwise drawn on 1.8.2003 and 1.8.2004, were withheld. Insofar as the bar of increment which fell due on 1.8.2004, is concerned, the punishment could not be enforced in its entirety, since the petitioner had retired on 30.6.2005.

3. Since the bar of increment was without cumulative effect, once the period of punishment is over, the incumbent's pay would be fixed taking into account the increments which fall due subsequently. Had the petitioner continued in service after 1.8.2005, the petitioner's pay would have been fixed in such a manner that he would have got the benefit of the increment inasmuch as the bar of increment was without cumulative effect.

4 In the circumstances, where the petitioner retired on 30.6.2005, there were two options open to the board. One was to call upon the petitioner to deposit the monetary value of the amount, which otherwise, would have been deducted from the petitioner's pay, had he continued upto 1.8.2005. Apparently, this was done. The petitioner was directed to pay Rs.779/- which he did as evidenced by Ext.P5. In the alternative, the said amount should have been recovered from the petitioner's pensionary benefits.

5. But the grievance of the petitioner seems to be that his pensionary benefits have been fixed taking into account the last pay certificate, which reflected the pay sans the increment on 1.8.2003 and 1.8.2004. But, as mentioned above, the pay would have been re-fixed taking into account the said increment subsequent to 1.8.2005 had the petitioner continued in service.

Apparently, this was the method of calculation suggested by the Accounts Officer as evidenced by Ext.P8. This has not been given effect to, so far. The representation made by the petitioner before the Chief Engineer vide Ext.P10 was not fruitful. Hence, this writ petition.

6. A counter affidavit has been filed by the Board essentially referring to the Government Order dated 12.8.2005, which mentions that if the period of barring of increment without cumulative effect extends beyond the retirement date, the pay of the incumbent should have been fixed notionally calculating the pensionary benefits. It is contended by the standing counsel that the Government order is subsequent to the date of retirement and the benefit thereof cannot be extended.

7. I heard learned counsel for the petitioner Sri.S.Ramesh Babu and learned standing counsel for the Board. My attention was drawn to Rule 11(iii) Note 3 which reads as under:

> ***"(3) In case the order of increments cannot be given effect to, the monetary value equivalent to the amount of increments ordered to be withheld will be recovered from the pay of the officer. If the officer retires from service before the recovery could be effected the amount will be***

recovered from his pension or death-cum-retirement gratuity."

8. Inasmuch as the punishment imposed on the petitioner is without cumulative effect, the retirement benefits will have to be revised, treating the last pay drawn by him on the basis of the last pay by notionally fixing it after 1.8.2005. As otherwise the barring of increment, which came into effect on 31.12.2002, will become one with cumulative effect. Obviously that has not been contemplated by the order of punishment imposed on the petitioner.

In the circumstances, the writ petition is disposed of directing the 2nd respondent to pass appropriate orders on Ext.P10, by directing re-fixation of the pensionary benefits due and admissible to the petitioner, in such a manner that the increment which fell due on 1.8.2003 and 1.8.2004 are reflected in his pay with effect from 1.8.2005. Necessary action in this regard will be taken within a period of two months from the date of receipt of a copy oft his judgment.

Sd/-

(V.GIRI)

JUDGE

sk/

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